



SHORELAND ZONING NEWS

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Please Share

For over 15 years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



Timing of Statewide Timber Harvesting Standards- Got Clarity?

As you are probably aware, new statewide timber harvesting standards have been adopted through Department of Conservation (DOC) rulemaking efforts. We wrote about these standards in previous newsletters, but we haven't yet informed you of the timing of when the new standards take effect. On May 25, 2005, the Governor signed into law LD188, which establishes the framework for the implementation of the new standards, including the effective date for the new standards.

The enacted statutory language states: "...rules adopted...apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis...have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3."

Albeit a unique way to establish an effective date for a new regulation, it is fairly clear. However, we have received numerous questions about how towns will implement a change to their local ordinance if they wish to either have the DOC fully administer or assist the towns

with administration of the new standards. Specifically, if a town wishes to adopt the new standards at a spring 2006 town meeting, how do they write their ordinance such that the current standards apply until such time the DOC begins to administer them? Our understanding is that towns will need to adopt the new language with a caveat stating that the new language will not be effective, or the current language repealed, until January 1st of the 2nd year following the year in which...(see second paragraph). If enough towns adopt such language and the standards become effective, the current language would be considered repealed and the new language in effect.

There are other matters pertaining to the new standards for towns to consider presently. There are 3 options for retaining a well-distributed stand of trees within the new standards. The 3 options include: 1) 40% volume removal on each acre in any 10-year period; 2) retaining 60 square feet of basal area per acre of woody vegetation; and 3) an outcome based option requiring a plan by a licensed forester or certified wildlife professional and approved by the Department of Conservation's Bureau of Forestry.

Options one and two may be adopted into town ordinances prior to the effective

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date of the statewide standards and the Department will approve such an amendment.

However, prior to the effective date of the statewide standards the Department will not approve ordinance amendments that immediately implement option 3, as the DOC will not be reviewing applications under these standards until such time the standards take effect statewide (so option #3 really isn't an option for immediate use).

Of course, if a town adopts only option 1 and/or option 2, the other timber harvesting performance standards should be adopted into a town ordinance as well, but they would be administered by the town without any assistance from DOC. DOC will provide assistance only to municipalities that adopt standards identical to the statewide timber harvesting standards and only once they become effective.

Today's Ten Shoreland Zoning Tips

1. Temporary structures need permits and have to meet setbacks.
2. A restaurant with a small lobster tank is not a functionally water dependent use.
3. Shrub/open wetlands next to the lake are PART of the lake if during normal high water, the elevation of the water in the wetland is the same as that of the lake.
4. A boathouse, when removed or destroyed by more than 50% of its market value, must be rebuilt to meet the water setback to the extent practical. By statute, a boathouse is not a water-dependent structure.
5. Patio pavers are structures AND count toward lot coverage.
6. The term "livable area" does not appear in the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*.

7. A dock larger than necessary for your boat, that is wide enough for your grill, lawn chairs and 12 of your closest friends isn't a dock...it's a deck.
8. Alders are trees too. If greater than 2" in diameter they count as points in the point system. And if only alders are present they are considered to be the forest canopy.
9. Just because a two car garage would make your property worth more, it does not mean you need one to have reasonable return.
10. Registering your shed and putting license plates on it, does not make it a vehicle. It's still a structure, but now it just has wheels!



How Much Of The Structure Do I Count Towards The Expansion Anyways?

One of the questions we in the Shoreland Zoning Unit get from landowners most often is how much of their non-conforming structure they can count towards their expansion allowance. One would think this would be a simple question, but alas, there are variables that must be considered. The first thing that you as a CEO must determine is the date which the structure became legally non-conforming. In most cases it is the date of the original adoption or imposition of the Shoreland Zoning Ordinance in your municipality. It may also be a subsequent date when the ordinance was amended to cause the structure to be non-conforming. Bear in mind, the regulation in question is a structure setback requirement. Non-conforming uses, except residential non-conforming uses, cannot be expanded in most municipalities.

So now we know we have to look up the date to find out when the structure became non-conforming. But the ordinance in §12.C.1.a says "[a]fter January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be ex-

Miscellaneous Notes From the SLZ Unit...

- Frederick Michaud's 2006 *Maine Planning & Land Use Laws* booklet are now available. This is not meant to be an advertisement, rather it is intended to inform you that this handy booklet is now available. (Fredrick Michaud, 56 Bradford Lane, South China, Maine 04358- 445-4402)
- Four previously vacant Field Services & Enforcement Unit positions have been filled. Jeff Kalinich, Chris Redmond, and Alison MacKenzie are now covering the towns in the southern Maine region, and Colin Clark is our new staffer in our central Maine region. Please welcome these new staff!

panded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure.” So doesn’t that mean we automatically use January 1, 1989? No. If the structure became non-conforming at a later date, that later date is when the 30% rule affects the structure. For example, if a structure was built 75 feet from a lake in 1980, it was a conforming structure at that time. Suppose, however, that the town on June 3, 1993, amended its ordinance to increase the lake setback to 100 feet. The structure is now non-conforming and the 30% expansion rule would be based on the size of the structure as it stood on June 3, 1993, not January 1, 1989. So while no non-conforming structure expanded after January 1, 1989, can be expanded by more than 30% of the volume or floor area, the date by which we calculate the volume and floor area is the date the structure became non-conforming.

Next, we have to look at exactly what we are calculating. Volume is defined as “all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.” It is important to note that “livable area” is not mentioned anywhere in that definition, and that we measure from **outside** the structure. This would indicate that we include all the eaves and attic spaces, as well as full basements. Similarly, the definition of floor area is “the sum of the horizontal areas of the floor (s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.” This means we add all stories of the structure including full basements at least six feet in height. Also remember that we also have to calculate both floor area and volume, because neither one can exceed 30% of what existed on the date the structure became non-conforming.

Guidelines, Guidelines, Guidelines...

The Department continues to move forward with the proposed changes to the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines). A public hearing has been held by the Board of Environmental Protection and deadline for public comment on the proposed changes ends on December 1st.

We're Looking for Some Good Stories and Questions!!!

Have any good tales from the field? Nightmares from the courtroom? Questions that frequently arise? Feel free to contact us with these quips and we will consider sharing the stories in this newsletter in an effort to help others. The Shoreland Zoning News is intended to provide you with information to help you do your job!

Legislative Update— First Session

In the last issue of the *Shoreland Zoning News*, we informed you of the adoption of L.D. 1161, an act to require towns to provide the Department a copy of all variance requests within the shoreland zone at least 20 days prior to action by the municipality. This law became effective on September 17th. We haven’t seen an appreciable increase in variance notifications received by the Department, so as a reminder to towns, please remember to send us copies of these requests!

Otherwise, there were several other noteworthy changes to State laws that might interest you:

- L.D. 188— An act to promote the uniform implementation of the statewide standards for timber harvesting and related activities in shoreland areas (we have discussed this previously, the basis for the new statewide standards adopted by the Department of Conservation, Bureau of Forestry);
- L.D. 261— An act concerning significant wildlife habitat and wetlands of special significance (this amendment adds significant vernal pools as an area of significant wildlife habitat under the Natural Resources Protection Act (NRPA));
- L.D. 1506— An act to update the laws governing borrow pits and quarries (amends the current laws to now include spill prevention and dust control standards, and also requires a minimum 50’ buffer be maintained between the working edge of an excavation and a public right-of-way that does not contain a road);
- L.D. 1588— An act to amend certain laws administered by the Department of Environmental Protection (among other changes, this law amends the definition of a coastal wetland in both the NRPA and the Mandatory Shoreland Zoning Act. Specifically, the reference to the use of a debris line to determine the edge of a coastal wetland has been removed).

The above bills were signed by the Governor and became legally effective on September 17, 2005.



More Notes:

We have not updated our *Shoreland Zoning News* contact list for several years now. As a result, we occasionally hear that the newsletter is not getting to everyone intended (CEO's, planning board, board of appeals, selectmen, council's, etc.) If you are no longer the appropriate contact person to receive this mailing, please contact us and we can update our contact list.

Contact Us:

Rich Baker, Coordinator, Augusta: 287-7730
Tracey Thibault, Bangor: 941-4116
Marc Russell, Presque Isle 764-0477
Mike Morse, Portland 822-6328

Questions & Answers:

Q. If I own a property that has 200 feet of shore frontage on a great pond and I grant an ease-

ment to someone else, can the person with the easement have his own path to the water?

A. No, unless there is not already a path or otherwise cleared area on the parcel. Not only is each shorefront lot limited to one 6' wide path to the water, it is also important to note that if the person with the easement must conform to the vegetation clearing standards as well.

Q. Our town particularly enjoys updating our ordinance and we are anxious to amend our shoreland zoning ordinance with the proposed changes even though they have not yet been finalized. Can we do that?

A. The current version of the proposed Guidelines is a working document and we anticipate changes to them as a result of public comment. Sorry to disappoint, but we would advise you to wait until the Guidelines are finalized so you'll know what the final product will be.



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